File #17763

IN THE MATTER between **JDQ**, Applicant, and **HBM**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before **Adelle Guigon**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories;**

BETWEEN:

JDQ

Applicant/Tenant

-and-

HBM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**November 24, 2022**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**JDQ, the Applicant** **PO, ONWTLL, witness for the Applicant** **RS, TPM, representing the Respondent**
Date of Decision:	**December 8, 2022**

REASONS FOR DECISION

An application to a rental officer made by JDQ as the Applicant/Tenant against TPM as the Respondent/Landlord was filed by the Rental Office September 15, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by email confirmed received October 13, 2022.

The Tenant alleged the Landlord had failed to maintain the locking mechanism to the rental premises in a good state of repair, resulting in the interference with the tenant's possession and enjoyment of the rental premises. The Tenant further disputed the Landlord's retention of a portion of the security deposit as being unjustified.

A hearing scheduled for November 2, 2022, was postponed at the request of the Landlord as they were not available for that date. The hearing was re-scheduled to and held November 24, 2022, by three-way teleconference. JDQ appeared as the Applicant/Tenant, with PO appearing from ONWTLL as a witness for the Applicant/Tenant. RS appeared representing the Respondent/Landlord.

Preliminary matter

The application to a rental officer identified TPM as the Landlord. The Landlord's representative clarified that TPM is not the Landlord, but rather is the property management company hired by the Landlord to manage the tenancy. The written tenancy agreement identifies the Landlord as HBM c/o TPM. The Landlord's representative requested that the style of cause be amended to identify HBM as the rightful Landlord. The Tenant agreed to the amendment. Therefore, going forward the style of cause for this matter will be JDQ v. HBM.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties commencing August 1, 2019. The Tenant vacated the rental premises, ending the tenancy August 31, 2022. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

.../3

Locking mechanism

It was established, at the hearing, that throughout the tenancy there were problems experienced during the colder months with ice building up on the front exterior door and within the locking mechanism. It was evident to the Tenant that this problem pre-existed her tenancy given there were latches that had been installed to the interior of the door so that it could be securely closed. The Landlord was repeatedly notified of the problem and took actions to remedy it only so far as to replace the weather stripping. It was the Landlord's opinion that as long as the locking mechanism could function with the application of de-icer that it was a normal part of living in the North and that the locking mechanism did not require further investigation into its inner workings.

The Tenant testified that the situation with the locking mechanism freezing, sticking, and being difficult to move escalated since January 2022. Each time she reported the ongoing problem to the Landlord she was told to keep using de-icer and that the locking mechanism was fine and a normal part of living in the North. The Tenant had to use force to close the door and lock the deadbolt into place, and it became a daily requirement to use the de-icer to unlock the deadbolt.

It became apparent that the deadbolt may not have always been sliding sufficiently into place to adequately secure the premises due to the condition of the locking mechanism. This concern was borne out on Friday, April 8, 2022, when an intoxicated person entered the premises during the Tenant's absence. The Tenant's housesitter discovered the individual passed out in the premises. The Tenant and the RCMP were immediately contacted, and the RCMP removed the individual. The Tenant immediately notified the Landlord and again requested the locks be changed to ensure the safety and security of the premises. When the Tenant did not hear back from the Landlord, she took the situation into her own hands to ensure the safety and security of the premises and her property, and arranged for a locksmith to inspect and repair the locking mechanism the morning of Saturday, April 9th.

The Locksmith appeared as a witness at the hearing and testified to attending the premises as requested and inspecting the locking mechanism. He discovered that the door was not properly closing and a hinge was loose. The Locksmith tightened the hinge, which helped the door to swing properly, but even then he noted a lot of force was needed to open the door.

The Locksmith widened the latch hole for the striker to facilitate the smooth entry of the latch. He noted that the deadbolt wouldn't turn properly, so he pulled it apart and discovered that it was rusted inside. He did not have a replacement core, so he changed out the whole lock and provided two new keys. The Locksmith confirmed that the locking mechanism was so rusted it couldn't totally lock and wasn't actually catching. In his opinion, it was more likely than not that the housesitter had locked the door when she left the premises but that the lock had not properly caught, meaning the door could be opened with relatively minimal force. He further confirmed that while de-icer was appropriate for occasional use it does eat away at the metal after a while. Between the moisture freezing the lock over time and the daily application of the de-icer, the locking mechanism had rusted out and was no longer reasonably functional.

The Tenant also provided a written professional opinion from a local Registered Architect on his knowledge and understanding of the National Building Code as it applies to the issue at hand. He responded to the information provided by the Tenant that:

> "The lock froze frequently during the winter and required regular, often daily, de-icing using an alcohol-based de-icing solution.
>
> The lock often froze in such a way that it could not be easily unlocked without de-icing solution, which impeded entering and exiting the apartment.
>
> The lock occasionally froze in such a way that it could not be easily locked without de-icing solution, preventing the door from being secured."

The Architect referenced item 9.9.6.7 of the *National Building Code* which speaks to door latching, locking, and opening mechanisms and says:

> 1) Principal entrance doors, exit doors and doors to suites, including exterior doors of dwelling units and other doors in an access to exit shall
>
> a) be openable from the inside or in travelling to an exit without requiring keys, special devices or specialized knowledge of the door-opening mechanism, or
>
> b) be controlled by electromagnetic locking mechanisms in accordance with Sentence 3.4.5.16.(4).

The Architect went on to say, "A lock that regularly freezes and requires application of de-icing solution to function does not meet *National Building Code* requirements as de-icing solution is considered a special device in this context. There are no allowances in the *National Building Code* for easing the requirements of article 9.9.6.7 based on location. Yellowknife's winter climate does not, therefore, permit the use of de-icing solution as a code-compliant tool to facilitate regular door operations."

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The Landlord's representative claimed that there did not appear to be any visual external evidence that the locking mechanism was damaged or deteriorating when their maintenance personnel attended prior to the April incident, and that the door when pulled on appeared to be secured. He testified that he attended the premises the morning of Saturday, April 9th, in response to the Tenant's calls the prior evening, and the door appeared secured and showed no damages. It seems more likely than not that the Landlord's representative attended the premises after the Locksmith had repaired the locking mechanism.

When the Tenant approached the Landlord's representative to pay for the lock repairs, the request was forwarded to the Landlord who refused to pay the costs of repairs believing them at the time as unnecessary and not their responsibility. At the hearing, the Landlord's representative claimed they were not aware that the reason the locking mechanism required replacement was because it was damaged, claiming that they thought it was replaced because of a suspicion that someone else had a key. This claim was refuted with text messages sent to the Landlord's representative on Saturday, April 9th, confirming that the locking mechanism was in fact damaged by rust.

The Landlord's representative conceded that the locking mechanism was damaged and required replacement, but was not prepared to pay the emergency call-out rate that was charged by the Locksmith to the Tenant. He argued that if he had been aware of the damages he would have had the locking mechanism repaired by in-house maintenance staff on the following Monday, which would have avoided the extra call-out costs. He was prepared to offer $150 in compensation for the costs of repairing the locking mechanism.

Findings with respect to the locking mechanism

Subsection 30(1) of the Act specifies that the Landlord is obligated to provide and maintain the rental premises in a good state of repair and in compliance with all safety and maintenance standards required by Law.

Subsection 34(1) of the Act prohibits the Landlord from disturbing the Tenant's possession or enjoyment of the rental premises.

Subsection 40(1) of the Act requires the Landlord to install devices necessary to make rental premises reasonably secure from unauthorized entry.

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I am satisfied that the Landlord was aware of ongoing issues with the front exterior door throughout the tenancy which rendered the door and/or the locking mechanism effectively inoperable without excessive use of force and repeated use of de-icing solution. I am also satisfied that the Landlord did not take adequate steps to assess the cause and consequential effects of the issues. Had the Landlord taken those steps they could have effected the necessary repairs to prevent further damage from occurring and to ensure the premises was in fact secured against unauthorized entry.

By failing to do so, they failed to comply with their obligations under paragraph 30(1)(a) of the Act to maintain the rental premises in a good state of repair, and they contravened item 9.9.6.7 of the *National Building Code* which constitutes a failure to comply with their obligations under paragraph 30(1)(b) of the Act to ensure the rental premises complies with all safety and maintenance standards required by law. Where the Landlord breaches a section 30 requirement they must compensate the Tenant for demonstrable monetary losses suffered as a direct result of the breach.

By failing to effect the necessary repairs in a timely manner, the Landlord also effectively interfered with the Tenant's possession and enjoyment of the rental premises. Where the Landlord breaches this section 34 obligation they must compensate the Tenant for demonstrable monetary losses suffered as a direct result of the breach.

And, by failing to repair the locking mechanism the Landlord failed to comply with their obligation under subsection 40(1) of the Act to install devices necessary to make the rental premises reasonably secure from unauthorized entry. The remedy for this breach is to order the Landlord to comply with the obligation, but the Tenant has already effected those repairs on behalf of the Landlord. Failure to comply with subsection 40(1) of the Act is also a summary offence as identified under subsection 40(3) of the Act, which is punishable with a fine not exceeding $500. If a summary charge were laid under this section, it would be brought before either Justice of the Peace Court or Territorial Court. This summary charge is not being laid against the Landlord for this offence.

I am satisfied that the Landlord was responsible for repairing the locking mechanism to the rental premises, and that in failing to do so the Tenant suffered demonstrable monetary losses as a direct result. The only reason the costs of repairs include emergency after-hours rates is because the Landlord failed to address the issue before the emergency arose. I am satisfied the Tenant is entitled to compensation for the full amount of the costs she had to pay to repair the locking mechanism. I find the Landlord liable to the Tenant in the amount of $393.75.

End of tenancy damages

The tenancy agreement ended August 31, 2022, an exit inspection was conducted with the Tenant present, and the security deposit was accounted for in accordance with the Act. The move-out security deposit statement was issued September 10, 2022, acknowledging the security deposit and interest of $2,501.34 and deducting $330.12 retained against costs of repairs. The remaining security deposit balance of $2,171.22 was subsequently deposited to the Tenant's bank account.

The Tenant did not dispute the repairs, but had concerns that the costs being claimed for the repairs were unreasonable. The repairs claimed included:

- reinstalling the bathroom towel bar;
- replacing a burned out lightbulb in the bathroom;
- replacing a damaged window screen;
- reinstalling a carpet transition strip; and
- tightening a loose bathroom toilet seat.

The Tenant argued that the towel bar had fallen off the wall during the previous joint tenancy that she was a party to, but they had just hung or sat the towel bar to rest on of the brackets rather than having it properly re-secured to the wall. The towel bar was not disturbed during the exit/entry inspection in 2019, so the Landlord did not identify the damage then, but it was disturbed during the exit inspection in 2022 and fell off the brackets, drawing the Landlord's attention to the damage. The Tenant claimed that the walls were "soft" and that was why the towel rack fell out of the wall, but that does not explain why the Landlord wasn't notified in order to repair it or why the Tenant didn't take steps to repair it herself. I am satisfied the Tenant is responsible for the towel rack and is liable for the costs to reinstall it.

The Tenant argued that the light bulb was in a fixture located on a high ceiling which would have required a ladder to access in order to even determine what kind of light bulb required replacing. The Tenant did not have an adequate ladder and did not feel it would be safe for her to replace the light bulb herself. This does not negate the Tenant's responsibility for replacing the light bulb, as such I am satisfied the Landlord's claim for compensation to replace it is appropriate and reasonable.

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The Tenant acknowledged her responsibility for repairing the transition strip and had purchased the replacement transition strip, but did not have either the tools or the know-how to trim and install the transition strip. She felt that the costs being claimed to install the item were unreasonable. I am not satisfied that is the case, and I find the Landlord's claim for compensation for the labour to trim and install the transition strip is appropriate and reasonable.

The entry and exit inspection reports were provided and confirm that all the claimed damages except the window screen occurred during the Tenant's tenancy. The window screen, however, was reported as bent when the tenancy started. It was reported as "tapped" at the end of the tenancy, but I don't know what that means. The parties agreed at hearing that the window screen was damaged at the end of the tenancy, but I am not satisfied that the damage was caused or exacerbated during the Tenant's tenancy. As such, I am not satisfied the Tenant is liable for the costs to replace the window screen. The screen replacement cost claimed on the invoice of $65.10 is denied, as is $16.25 for 15 minutes of labour at $65 per hour to install the replacement window screen, amounting to denied costs to replace the window screen totalling $85.42, including GST.

I am satisfied the Landlord appropriately retained a portion of the security deposit against the costs of repairs in accordance with the Act, but I find that the Tenant is not liable for the costs of replacing the window screen and is entitled to the return of that portion of the retained security deposit in the amount of $85.42.

Orders

An order will issue:

- requiring the Landlord to compensate the Tenant for the costs of repairing the locking mechanism to the rental premises in the amount of $393.75 (p. 30(4)(d), p. 34(2)(c)); and
- requiring the Landlord to return a portion of the retained security deposit to the Tenant in the amount of $85.42 (p. 18.1(b)).

Adelle Guigon
Rental Officer